Jurisdictional Statement

81-1671

Office - Supreme Court, U.S.
FILED
FEB 13 1982
ALEXANDER L. STEVAS,
CLERK

No. ———

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1981

ALFRED Y. K. AU,
Petitioner–Appellant
vs.

HOYT F. KELLY, R. M. COOKE, HENRY B. CLARK, JR, JAMES T. KAWAMURA and L. A. WILLS, Trustees,
dba
FINANCIAL PLAZA OF THE PACIFIC
Respondnt–Appellees.

ON APPEAL FROM THE SUPREME COURT OF HAWAII

JURISDICTIONAL STATEMENT

ALFRED Y. K. Au, pro se
947B Koko Head Ave
Honolulu, Hawaii, 96816

QUESTIONS PRESENTED

1. WHETHER OR NOT THE ORDER FOR A NEW TRIAL IS VALID, WHERE THERE ARE PATENT EVIDENCES IN THE RECORD OF ABUSE OF DISCRETION and a LACK OF CLEAN HANDS, IN AN OSTENSIBLE CONSPIRACY TO DENY THE GUARANTEES OF THE SEVENTH AMENDMENT TO THE CONSTITUTION.

2. WHETHER OR NOT THE "LACK OF A TRANSCRIPT" IS OF SUFFICIENT CONSEQUENCE TO SUMMARILY DISMISS ALL ALLEGATIONS OF ABUSE OF DISCRETION AND LACK OF CLEAN HANDS, WHICH ALLEGATIONS ARE PATENTLY EVIDENT AND WHOLLY SUPPORTED BY THE RECORD.

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9 Wheat (U.S.) 738 6L ed 206, 34d paragraph 11

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JURISDICTION

Jurisdiction of this Court is invoked under 28 U. S. C. P. 2101 (c) after Notice of Appeal was duly filed pursuant to Rule 10.3 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL ISSUE – SEVENTH AMENDMENT

The Seventh Amendment guarantees a jury trial and ipso facto, the results of the jury's verdict.

Admittedly, the Trial Judge may grant an Order for a New Trial for justifiable cause.

However, in the case at hand, the validity of the Order for a New Trial has been challenged on the grounds of abuse of discretion and lack of clean hands. These allegations have been ignored and wantonly waived in the appellate review of the case.

It is axiomatic that the entitlement to a trial by jury is a constitutional right over which this Court has final jurisdiction. It is also important that where the concerns extend beyond consideration of the private interests and private fortunes of the party litigants, to the unavoidable apprehension about the efficacy and integrity of the judicial processes, acceptance of this case for review and adjudication is of paramount importance, if the public's faith in our system of justice is to be continued.

OPINIONS AND JUDGMENTS BELOW

July 27, 1977

Jury's Special Verdict of:

SPECIAL DAMAGES 0

GENERAL DAMAGES 45,000.

(Appendix R–23, page 23)

July 29, 1977

Judgment filed. (Appendix R–25, page 25)

October 28, 1977

Order granting Defendants' Motion for New Trial limited to issue of damages.

(Appendix R–38, page 33)

September 4, 1979

Judgment of $1,400.00.

October 16, 1981

Appeal from Circuit Court, denied by Intermediate Court. Opinion. (Appendix, page 18)

October 26, 1981

Motion for Reconsideration denied by Intermediate Court.

November 13, 1981

Application for Writ of Certiorari denied by Hawaii Supreme Court.

December 1, 1981

Notice of Appeal to the United States Supreme Court. (Appendix, page 45)[1]

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1. Reduced replica to show Court's validation of receipt.

STATEMENT OF THE CASE

This case is based on:

A.	Abuse of Discretion	– 5 counts
B.	Lack of Clean Hands	– 2 counts
	Total	7 counts

A. ABUSE OF DISCRETION

Count No. 1.

The Original Trial Judge abused his discretion by obliterating the distinction between General Damages and Special Damages in order to justify his grant of the Order for a New Trial.

Count No. 2.

The Original Trial Judge abused his discretion by amending his original judgment already filed, under the guise of Granting Defendants' Motion.

Count No. 3.

The Original Trial Judge abused his discretion by continuing with the case after he had granted an interlocutory appeal.

Count No. 4.

The Second Trial Judge abused his discretion by implementing Defendants' Motion in Limine, in chambers, and failing to rule on it as required by the Rules.

Count No. 5.

The Intermediate Court abused its discretion by shirking its responsibilities to adjudicate the allegations of abuse of discretion and lack of clean hands; relying solely on the untenable excuse of "lack of transcript."

B. LACK OF CLEAN HANDS

Count No. 6.

Defendants lack clean hands by involvement in a conspiracy, and/or in an inveiglement of the Court's Clerk in an aborted attempt to have Petitioner–Appellant stipulate to a new trial on all issues.

Count No. 7.

Defendants lack clean hands by blocking Petitioner's Interlocutory Appeal with an improper allegation to conceal the pertinent fact that the court had already granted permission for an Interlocutory Appeal.

ARGUMENT

I.

WILLFUL OBLITERATION OF DISTINCTION BETWEEN GENERAL DAMAGES AND SPECIAL DAMAGES.

1. The very objective of securing a Special Verdict from the Jury is to obtain a catagorical determination of damages. The Jury did and returned:

Special Damages	0
General Damages	45,000.

(See Appendix – R 23)

2. General Damages represent, but not limited to, consideration for pain and suffering, shock and trauma, agony and frustration. Admittedly such damages call for very subjective evaluations, which are considered wholly within the province of the Jury to decide. No court should superimpose its own subjective evaluation.
In Walrus Manufacturing Co. v. Excel Metal Cabinet Co. 161F. Supp. 840, 843–844 (W.D.N.Y. 1957), it was determined that "the jury is generally considered to be the supreme arbiter on the questions of damages.."
3. As documented by the depositions of the doctor and of the Petitioner–Appellant, all of which are part of the record, the injury to Petitioner's right wrist is permanent and considered irreparable, This means pain and suffering for the rest of his life, inability to function effectively as an accountant, and inability to make his own repairs to his rental units.
4. In addition to physical pain and suffering, Petitioner suffered emotional trauma mental anguish due to frustration and ridicule that even as a former tax examiner, he was not able to locate and identify the prospective defendants responsible for his injury.
5. Who or what Financial Plaza is, was a well kept secret. It was not listed in the phone book. Clerks and tellers in the operating establishments gave no clue, or volunteered any assistance.
6. This frustrating inability to identify the legal prospective defendant(s) was a strong contributing factor in Petitioner–

Appellant's inability to secure representation by legal counsel.

7. It was wholly inconceivable and utterly unbelievable that Financial Plaza of the Pacific, which comprises some of the most prestigious financial institutions in the State of Hawaii was shoddy enough not to register with the Department of Regulatory Agencies, even though it has publicly represented and advertised itself as a condominium. This is documented by the evidences at the trial, and therefore part of the record, reproduced in replica to preserve their authenticity. See Appendix, page 44 for exhibits to wit: Certification by Wayne Minami, Director of Regulatory Agencies that FINANCIAL PLAZA OF THE PACIFIC is not registered in this Department either as a corporation, partnership, or trade name.

   The Exhibit, page 42 which must be considered a gross misrepresentation, showing –

   FINANCIAL PLAZA OF THE PACIFIC
   Declaration of Horizontal Property Regime
   and
   By Laws of Association of Owners

8. The Jury's verdict of $45,000.00 in General Damages is well documented by the Record. There is sufficient evidence in the Record, and without reference to transcript of the case, to support the Jury's verdict on General Damages.
9. Special Damages represents restitutions or reimbursements for losses which could be reasonably calculable and attributable to the injury. Two items of Special Damages were considered – Medical expense, of which because of the declared permanency of the injury and coverage by Petitioner's own medical insurance, did not amount to much and the claim was waived by Petitioner. The other item was loss of income. Ironically, it was Defendants who subpoenaed Petitioner's tax returns for the years subsequent to injury. And much to their chagrin found a marked declining pattern. At the first trial Defendants were successful in excluding the evidence on the arument that the re-

turns were incomplete in that one year, 1978, was missing. The jury found for the Defendants and returned a verdict of "0" for Special Damages. If there be any cause for a re-trial, it should be for Special Damages (Petitioner's declining income).

10. The Jury's award of $45,000 was for General Damages. Medical expense related to Special Damages. The crux of the issue is the Trial Judge's finding of fact – "that he didn't see how the jury reached the amount ($45,000.00) on so little medical expenses presented." Amount inserted. (Appendix, page 35 Other Exhibits Minutes by Order of the Court, dated August 26, 1977). In so declaring the Trial Judge obliterated the prescribed distinction between General Damages and Special Damages. By so doing he was able to give his Order for a New Trial a facade of propriety and legality. He was literally comparing "apples to oranges." Had he abided by the prescribed distinction between General Damages and Special Damages, no way could he have concluded that the amount of "0" for Special Damages could be excessive when compared with the meager medical expenses. His obliteration of the difference between General and Special damages was therefore willful and with malice aforethought.

    In Harkens v. Ikeda, 57 Haw 378, 379, 380, 557 P. 2d 788 (1976) the distinction between General Damages and Special Damages was never obliterated but consistently maintained and separately examined. In that case the weight of the evidence showed that the Special Damages by Plaintiff's own assessment was $27,500.00 as compared $40,000.00 returned by the jury. That error was the justification for ordering a new trial. Had the distinction between General and Special Damages been maintained in the case at hand, there would have been no grounds for casting any aspersions as to any misjudgment by the jury or justification for a new trial. The judge knew that, so he obliterated the distinction between General Damages and Special Damages

11. The willful distortion, mismatch or "tailoring" of facts to deny a jury's verdict by a sitting judge, is of very serious consequence and ramification which go beyond the immed-

iate task of adjudicating the differences between the party litigants. It strikes at the very heart and integrity of the judicial processes.

12. Such judicial abuse of discretion is worst than jury tampering because it is done from a posture of great influence and trust. For admittedly, and properly so in most cases, the conclusion of facts by the trial judge are always accepted in good faith, giving every benefit of any doubt or misjudgment, in appellate reviews.

II.
AMENDING JUDGMENT
UNDER GUISE OF "GRANT OF MOTION"

1. There is a basic difference between the "Grant of a Motion" and an "Amended Judgment". In the former, the judge accepts the pleadings of the movant and thus he need not express the reasons therefor in his Order. In the Amended Judgment however, he must state his reasons.

   In Freid v. McGrath, 137 F 2d, 355:

   > "When a new trial is granted upon motion of a party, the grounds appear in the motion, as the reasons assigned by the movant in compliance with the requirements of Rule 59(a). When the judge acts of his own initiative he must set out the grounds in his order. Otherwise, the purpose of the rule will not be accomplished, the record will not reveal the basis upon which the order is made or permit intelligent review by an appellate court."

2. Defendants' Motion for a New Trial (Appendix R–28) asks for a new trial on all issues, which would have included the issue of negligence.

   In his conclusion on the facts (See Appendix page 35 Other Exhibits – Minutes, Aug. 26, 1977) the Trial Judge remarked "that there was ample evidence of negligence."

   Also, in motion for new trial (Appendix R–28) Defendants' allegation No. 5, an assertion that Petitioner's self-representation is prejudicial, must be considered illegal and improper because it was an incendiary appeal to the

judge's professional bias, on the eve of the expiration of his ten year term and his prospective return to private practice.

In Osborn v. Bank of United States, 9 Wheat (US) 738 6 L ed 206, 34d paragraph, Chief Justice Marshall in delivering the opinion of the Court stated: "Natural persons may appear in court, either by themselves, or by their attorney." Underscore supplied.

3. Therefore the Order for a New Trial (Appendix R–38) was in fact an Amended Judgment. It could not be a Grant of a Motion.

> "A judge may properly grant a new trial for reasons wholly different from the reason assigned by the movant, but when he does so he acts on "initiative of court" within Rule 59(d) and his action must be taken within ten days after entry of judgment and must specify the grounds therefor."
> Federal Rules of Civil Procedure, rule 59(d)
> 29 U S C A, following section 723C.

4. It is eminently clear that, not being able to grant a legitimate Order based on an Amended Judgment because of the ten day rule, the judge disguised his "Amended Judgment" as a "Grant of a Motion" instead. And thus we have a clear case of an abuse of discretion, a cover-up.

III.
CONTINUING AFTER GRANTING INTERLOCUTORY APPEAL

1. The Trial Judge should have recessed and not continue the case when he had granted Petitioner permission for an interlocutory appeal, unequivocally. The Judge "explained further that he (Petitioner) can appeal at this point under Rule 73, HRCP." Insertion and underscore supplied. (See Appendix page 35 Other Exhibits – Minutes, Aug. 26, 1977)
2. It is a clear abuse of discretion when the Trial Judge continued with the case after he had granted permission for an interlocutory appeal. At this point he should

have disqualified himself.

In Dakan v. Superior Court, 2 CA. App. 52, 82P 1129, on the subject of disqualification, it was said:

> "The judge should not only be honest and impartial, but his acts and conduct should be such that there can be no foundation for questioning his motives."
>
> Continuing:
>
> "On the other hand, where the facts are honestly stated and when so stated they point to a certain condition that would absolutely influence men in that business transactions of life, and when applied to the particular case would lead to a reasonable person to hesitate as to whether or not the judge, could, under the circumstances, considering the weaknesses of human nature, entirely ignore such facts, there should be no hestitation in calling in another judge, so that the fountain head of justice should be above suspicion."

The facts are clear that in the case at hand, the Trial Judge had a change of heart about granting the interlocutory appeal. At that point, he should have disqualified himself, rather than continuing with the case. And by continuing under such disqualifying factors he had clearly abused his discretion.

IV.
MOTION IN LIMINE IMPACTED WITHOUT FORMAL RULING

1. In accordance with Rule 18 of the Circuit Court on Pre-Trial Disclosures and Marking of Exhibits, Petitioner submitted a blown up chart of his progressive loss of income as shown by his income tax returns which were already subpoenaed by Defendants.

   This chart (Appendix page 36 Other Exhibits – Pre Trial Statement) showed a projected loss up to 1978 of $46,140.82. Coroborating this loss were additional evidence showing (a) Petitioner's forced retirement from his salaried City job – being demoted from analyst to clerk; (b) loss of

long standing accounting clients in his outside C.P.A. practice; (c) citations for failure to repair rental units.

2. Faced with this array of evidence supporting Special Damages of $46,140.82, Defendants filed an eleventh hour Motion in Limine, which prohibits, among other things, item No.5. (Appendix page 39 Other Exhibits).

   "(5) Any writings or documentation prepared by plaintiff purportedly evidencing loss of earnings or other special damages."

3. The second Trial Judge did not comply with Rule 16(6) HRCP which requires that "The court shall make an order which recites the action taken. . .".

   Instead, the court ordered a suppression of all of the evidences of Special Damages, in chambers.

4. Because the motion carried the threat of "mistrial proceedings" which will continue the case forever in "interlocutory limbo", to the distinct disadvantage of Plaintiff, Petitioner–Appellant was reconciled to his role in the second trial, – that of a lamb led to the slaughter.

5. Failure to issue the required order according to the rules, and the suppression of vital and pertinent evidences, supporting Special Damages are the grounds for the conclusion of a clear abuse of discretion by the second Trial Judge.

V.
"LACK OF TRANSCRIPT" – UNTENABLE EXCUSE

1. The Intermediate Court of Appeals shirked its judicial responsibilities by not addressing and adjudicating the issues of abuse of discretion and lack of clean hands, which issues form the very basis of this action. (See Opinion – Appendix page 18).

2. The excuse of "Lack of Transcript" is wholly untenable because the actions complained about took place after or before the trial in chambers. Hence these actions would not be covered by the transcript at all.

3. The evidences supporting the allegations are well documented by the record and the exhibits of the trial.

4. Admittedly, the transcript of the trial will show evidences of perjured testimony, obstruction of justice by withholding the appearance of a key witness – all of which will make interesting reading, but will not be germane to the issues at hand.
5. We submit that the nonfeasance of the Intermediate Court is a clear abuse of discretion.

VI.
CONSPIRACY AND/OR INVEIGLEMENT

1. We submit that the evidences in the record indicate a plot, which was aborted, to get Petitioner to stipulate for a trial on all issues, which would include the issue of negligence, in which the Original Trial Judge had concluded that there was "ample evidence" (Ibid). To wit: APPENDIX
   R – 35 Letter from Griffith to Au
   R – 36 Letter from Au to Griffith
   R – 37 Letter from Griffith to Judge
2. It is patently clear that there was ex-parte discussion of the case in the absence of Petitioner.
3. Whether the Clerk acting on his own, or whether he was "fronting" for the judge is immaterial to the conclusion of Unclean Hands by Defendants in initiating this aborted deal.
   The dictim on Clean Hands is as follows:
   " The maxim that he who comes into equity must come with clean hands necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant, and accordingly, one's misconduct need not necessarily have been of such a nature as to be punishable as a crime to justify legal proceedings of any character, but any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause of invocation of the maxim"
   27 Am Jr. 2d 138. See also New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc. CA 5 Miss., 291 Fd 471.
4. The Order for a New Trial should be stricken for "Lack of Clean Hands."

VII.
INTERLOCUTORY APPEAL WAS BLOCKED NOTWITHSTANDING HARMLESS ERROR

1. In granting the interlocutory appeal "at this point" (ibid) the First Trial Judge gave the wrong citation. He cited Rule 73, HRCP which concerns appeal from final judgments and NOT interlocutory appeals. The error in citation is obvious and clear, considering the circumstances and the subject under discussion.
2. Defendants' Motion to Strike (Appendix R 45) was literally (but not substantively) correct in stating
   "2. That no application has been made to this Court for interlocutory appeal as required by Section 641 – (b), Hawaii Revised Statutes."
3. Relying on this technical error, and in complete disregard of Rule 61. HARMLESS ERROR, HRCP, Defendants have successfully blocked Petitioner's interlocutory appeal.
4. Defendants lacked clean hands by taking advantage of a harmless error by the Trial Judge; oblivious to, and perhaps actually counting on, its dire consequences – the blocking of the interlocutory appeal at all costs.

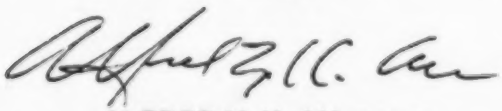
CONCLUSION

WHEREFORE, Petitioner–Appellant prays that this Court will find and conclude as follows:

1. That the Supreme Court of Hawaii had erred.
2. That the Original Judgment of $31,500.00 for General Damages be reinstated.
3. That a declaratory judgment of $46,140.82 be issued for Special Damages, based on the suppressed evidence of loss of earnings.
4. That an amount equalled to the total of the above damages be assessed as Punitive Damages.
5. Costs and interest.

Dated: Honolulu, Hawaii, February 1, 1982

Respectfully submitted,



ALFRED Y. K. AU, pro se
Petitioner–Appellant

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Appendix

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++Reduced replicas to preserve their authenticity

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/s/ Clement J. H. Chun
CLERK SUPREME COURT

NO. 7598
IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1981

ALFRED Y. K. AU, Plaintiff–Appellant, v. HOYT F. KELLY, R. M. COOKE, HENRY B. CLARK, Jr., JAMES T. KAWAMURA, and L. A. WILLIS, TRUSTEES, dba FINANCIAL PLAZA OF THE PACIFIC, Defendants–Appellees.	CIVIL NO. 47984 APPLICATION FOR WRIT OF CERTIORARI INTERMEDIATE COURT OF APPEALS HONORABLE YOSHIMI HAYASHI, FRANK D. PADGETT AND JAMES S. BURNS, JUDGES

ORDER

The Application for Writ of Certiorari is hereby denied.

DATED: Honolulu, Hawaii, November 13, 1981.

SUPREME COURT
SEAL
STATE OF HAWAII

FOR THE COURT:
/s/ William A. Richardson
Chief Justice

Alfred Y. K. Au, pro se
for the Writ

FILED
1981 OCT 26 PM 2:59
/s/ Darrell N. Phillips
CLERK INTERMEDIATE
COURT OF APPEALS

NO. 7598
IN THE INTERMEDIATE COURT OF APPEALS
OF THE
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff–Appellant, vs. HOYT F. KELLY, R. M. COOKE, HENRY B. CLARK, JR., JAMES T. KAWAMURA, and L. A. WILLS, TRUSTEES, dba FINANCIAL PLAZA OF THE PACIFIC, Defendants–Appellees.	)	CIVIL NO. 47984 MOTION FOR RECONSIDERATION

ORDER DENYING MOTION FOR RECONSIDERATION

Upon consideration of plaintiff–appellant's motion for reconsideration filed on October 23, 1981,

IT IS HEREBY ORDERED that said motion be and is denied.

DATED: Honolulu, Hawaii, October 26, 1981.

Alfred Y. K. Au,
Plaintiff–Appellant, Pro Se,
on the motion

/s/ Yoshimi Hayashi

/s/ Frank D. Padgett
/s/ James S. Burns

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COURT OF APPEALS

IN THE INTERMEDIATE COURT OF APPEALS
OF THE
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff–Appellant, vs.
HOYT F. KELLY, R.M. COOKE, HENRY B. CLARK, JR.,
JAMES T. KAWAMURA, and L. A. WILLS, TRUSTEES,
dba FINANCIAL PLAZA OF THE PACIFIC,
Defendants–Appellees.

NO. 7598

APPEAL FROM FIRST CIRCUIT COURT
HONORABLE YASUTAKA FUKUSHIMA, JUDGE

CIVIL NO. 47984
OCTOBER 16, 1981

HAYASHI, C.J., PADGETT AND BURNS, JJ.

APPEAL AND ERROR – motion for new trial – review.

Both the grant or denial of a motion for new trial is within the trial court's discretion and will not be reversed, absent a clear abuse of discretion.

SAME – same – same.

It is no abuse of discretion to grant a motion for new trial where the amount of damages awarded by the jury exceeds the amount possibly justified by the evidence.

SAME – same – remittitur.

Under HRCP Rule 59, when the trial court believes that the judgment for damages is excessive and against the weight of evidence,the court may order remittitur and alternatively direct a new trial if the plaintiff refuses remittitur.

Per Curiam. Appeal is taken from a judgment in favor of the Plaintiff–Appellant Alfred Y. K. Au (AU) at the second jury trial of his personal injury action. The verdict entered in Au's favor at the second trial is substantially lower than the verdict entered in his favor at the first trial. The Defendants–Appellees

Hoyt F. Kelly, R. M. Cooke, Henry B. Clark, Jr., James T. Kawamura, and L. A. Wills, Trustees, dba Financial Plaza of the Pacific (Financial), at the close of the first trial, were granted a motion for new trial and Au now primarily ascribes error to (1) the order granting the motion for new trial, (2) the order granting the motion for new trial on the issue of damages only, and (3) the court's refusal to admit into evidence at the second trial a chart detailing his loss of income as special damages, and urges the court to reinstate the original verdict. We decline and affirm.

Au brought this action against defendants–appellees on April 7, 1976, for injuries he sustained on April 18, 1974, when a swinging entrance door of the Financial Plaza of the Pacific sprung back and struck him on his wrist.

The matter came to trial in July 1977 before Judge John C. Lanham. Au appeared pro se. On July 27, 1977, the jury returned a verdict in Au's favor, finding that Financial was 70% negligent and Au 30% negligent. It awarded $45,000 general damages and no special damages. The court entered judgment in favor of Au in the amount of $31,500 on July 29, 1977. On August 5, 1977, pursuant to Rule 59 of the Hawaii Rules of Civil Procedure (HRCP), Financial filed a motion for a new trial or in the alternative for remittitur, urging the court that (1) the verdict was contrary to the evidence, (2) the evidence was insufficient to establish defendants' liability, and (3) the amount of damages were excessive. On August 26, 1977, after a hearing, the court gave Au the option of agreeing to a $14,000 judgment in remittitur or submitting to a new trial. Au refused remittitur. The court then agreed to grant the motion for a new trial but took under advisement the question of whether the new trial would be on all issues or damages only. On October 26, 1977, the court entered its order granting the motion for a new trial on the issue of damages only. On November 23, 1977, Au appealed this ruling to the Hawaii Supreme Court; and on October 6, 1978, the Supreme Court dismissed the appeal on the ground that no final judgment had been entered and the appeal was interlocutory. Apparently, though not in the record, Au then petitioned the United States Supreme Court for a Writ of Certiorari on December 23, 1978, which was denied on February 20, 1979.[1/]

1/ Au's opening brief at 7.

On May 15, 1979, Judge Arthur Fong set the new trial date for the week of August 13, 1979. On August 6, 1979, Financial filed a motion in limine requesting an order prohibiting Au from making reference to insurance, previous settlement offers or demands, the previous trial including the jury award and apportionment of liability, any reference to the First Insurance Company and its representatives, and any letters or documents prepared by Au purportedly evidencing his loss of earnings or other special damages. The disposition of this motion was not made a part of the record on appeal. On August 13, 1979, the new trial on the issue of damages was held before Judge Yasutaka Fukushima, and the jury rendered a verdict in favor of Au in the amount of $2,000.

In this appeal, Au argues that the court erred in granting Financial's motion for a new trial and that the original verdict should be reinstated. He also argues that the court's refusal to admit into evidence a chart detailing his loss of income in the years following the incident was erroneous, notwithstanding the fact that his federal and state income tax returns for the years in question [2/] were admitted.

At the outset, we are confronted with a serious lapse that hampers our ability to adequately review the questions raised in this appeal. Au in this case chose not to obtain transcripts of any of the proceedings below, and this makes our task much more difficult than it would be ordinarily.

The granting of new trials is governed by HRCP Rule 59, [3/] which rule is analogous to Rule 59 of the Federal Rules of Procedure.

In this jurisdiction, the law is clear that the disposition of a motion for new trial is a matter resting within the trial court's discretion and will not be overturned absent a clear showing of abuse. Stahl v. Balsara, 60 Haw. 144, 587 P. 2d 1210 (1978); Harkins v. Ikeda, 57 Haw. 378, 557 P. 2d 788 (1976); Struzik v.

2/ 1973 through 1978

3/ RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; * * *

City and County of Honolulu, 50 Haw. 241, 437 P. 2d 880 (1968); Wright & Miller, Federal Practice and Procedure: Civil § 2818.

Under HRCP Rule 59, when the trial court believes that the judgment for damages is excessive and against the weight of the evidence, it may order remittitur and alternatively direct a new trial if the plaintiff refuses the remittitur. Holmes v. Wack, 464 F. 2d 86 (10th Cir. 1972); Botsford v. Ideal Trucking Co., 417 F. 2d 681 (2d Cir. 1969); Linn v. United Plant Guard Workers of America, Local 114, 383 U.S. 53, 86 S. Ct. 657 (1966); Kang v. Harrington, 59 Haw. 652, 587 P. 2d 285 (1978); Kraft v. Bartholomew, 1 Haw. App. 459, 620 P. 2d 755 (1980); Wright & Miller, Federal Practice and Procedure: Civil § § 2805, 2814, 2815.

In the present case, since Au did not obtain and bring up the transcript of the first trial, we cannot determine what the evidence was; and, therefore, we hold that Au has failed to establish there was an abuse of discretion by the trial court in setting aside the jury's verdict and granting a new trial.

Au next contends that the court erred in refusing to allow into evidence a chart detailing plaintiff's loss of income for the years 1973–1978, following the incident. We disagree. Au did not specify the refusal of the chart into evidence as an error, nor did he show that it was, in fact, refused by the trial court.

Au's opening brief also raises a number of allegations of error made by the trial court. One of his allegations of error concerns the disposition of a motion in limine filed by Financial in the second trial which was directed at limiting the testimony and evidence to damages. Au argues that although the "motion was discussed in chambers with admonitions and warnings to plaintiff repeatedly made," no formal ruling was entered for the record by the trial court.4/

In reviewing the record designated on appeal, there is nothing to show that Au raised objections to the motion to properly preserve this issue for appeal or asked for a continuance of the trial until a determination had been made by the trial court on the motion. Not having done so, we hold that Au cannot com-

4/ Au's opening brief at 11–12

plain on this matter now after trial has been concluded. Accordingly, we decline to address this issue. We find that other contentions made by Au are without merit. Affirmed.

Alfred Y. K. Au,
Plaintiff–Appellant, Pro Se

John Price (Davis, Playdon & Gerson of counsel), for
Defendants–Appellees

FILED IN OPEN COURT
AT 11:15 o'clock A.M.
JUL 27, 1977
s/s M. Dowson
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs HOYT F. KELLY, et al., Defendants.	)	CIVIL NO. 47984 SPECIAL VERDICT

SPECIAL VERDICT

1. Were Defendants negligent? (If your answer to 1 is "yes", then go on to 2.)	YES
2. Was Defendants' negligence a proximate cause of injury to the Plaintiff? (If your answer to 2 is "yes", then go on to 3, 4 and 5. If your answer to 1 or 2 is "no", then do not proceed further.)	YES
3. Amount of special damages sustained by Plaintiff.	$0
4. Amount of general damages sustained by Plaintiff.	$45,000
5. Was Plaintiff negligent? (If your answer to 5 is "yes" then go on to 6. If your answer to 5 is "no", then do not proceed further.)	YES
6. Was Plaintiff's negligence a proximate cause of the Plaintiff's injuries? (If your answer to 6 is "yes", then go on to 7. If your answer to 6 is "no", then do not proceed further.)	YES

R–23

7. Considering the negligence of Defendants and Plaintiff to total 100%, what percentage is attributable to:

Defendants	70 %
Plaintiff	30 %
TOTAL	100%

We, the Jury in the above-entitled cause, return the following verdict.

DATED: Honolulu, Hawaii, this 27 day of July, 1977.

s/s_____
Foreman

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU,	)	CIVIL NO. 47984
Plaintiff,	)	
vs.	)	JUDGMENT
HOYT F. KELLY, R. M. COOKE,	)	
HENRY B. CLARK, JR., JAMES	)	
T. KAWAMURA, and L.A. WILLS,	)	
TRUSTEES, dba FINANCIAL	)	
PLAZA OF THE PACIFIC,	)	
Defendants.	)	
	)	

JUDGMENT

Pursuant to the verdict of the jury in this case entered on July 27, 1977, and pursuant to Rule 58 of the Hawaii Rules of Civil Procedure, the clerk is hereby ordered to enter forthwith, judgment in favor of the Plaintiff and against the Defendant in the sum of THIRTY–ONE THOUSAND FIVE HUNDRED DOLLARS ($31,500.), together with costs.

DATED: Honolulu, Hawaii, this 29th day of July, 1977.

/s/ John C. Lanham
Judge of the Above-Entitled Court

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

/s/ H. Seto
Clerk, Circuit Court, First Circuit State of Hawaii

R–25

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774
Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	) CIVIL NO. 47984) MOTION FOR NEW TRIAL, OR, IN THE ALTERNATIVE, MOTION FOR REMITTITUR; NOTICE OF MOTION

MOTION FOR NEW TRIAL, OR, IN THE ALTERNATIVE, MOTION FOR REMITTITUR

Come now defendants and pursuant to Rule 59, Hawaii Rules of Civil Procedure, hereby move this court to set aside the verdict of the jury returned herein on July 27, 1977 and to grant a new trial or, in the alternative, to order a remittitur on the following grounds:

1. The verdict is contrary to the evidence in this case.

2. The evidence in this case is totally insufficient to show any liability on the part of the defendants, and there is no evidence to sustain the verdict of the jury herein.

3. The evidence considered in the most favorable light on behalf of the plaintiff is insufficient to support a verdict of $45,000 general damages that the jury rendered against the defendants herein.

4. The verdict of the jury herein is excessive and appears to have been given under the influence of passion and prejudice.

5. Defendants' rights were substantially prejudiced in that plaintiff, appearing as his own counsel, in his closing argument improperly appealed to the sympathy and prejudice of the jury by stating that he was the sole provider for his family and several relatives, and that he would have difficulty making tuition payments for his sons at the Punahou School due to the accident herein.

6. Defendants' rights were substantially prejudiced by plaintiff's frequent reference, over objections, to his inability to identify defendants as proper parties thereby improperly appealing to the sympathy and prejudice of the jury.

7. In response to a jury question, the court erred in instructing the jury, over defendants' objection, that if the jury found plaintiff to be fifty percent (50%) negligent, he would receive nothing by way of damages and the court would enter judgment for the defendants.

This motion is based upon the records and proceedings in this action.

DATED: Honolulu, Hawaii, August 5, 1977.

/s/ Richard K. Griffith
RICHARD K. GRIFFITH
Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU,	)	CIVIL NO. 47984
Plaintiff,	)	
vs.	)	NOTICE OF MOTION
HOYT F. KELLY, et al.,	)	
Defendants.	)	
	)	

NOTICE OF MOTION

TO: ALFRED Y. K. AU, Pro Se
947-B Koko Head Avenue
Honolulu, Hawaii 96816

PLEASE TAKE NOTICE that the foregoing motion will be presented before the Honorable J. Lanham, Judge of the above-entitled Court, in his Courtroom at the First Circuit Court, Honolulu, Hawaii, on FRIDAY, the 26th day of August, 1977, at the hour of 8:30 o'clock a.m., or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, August 5, 1977.

/s/ Richard K. Griffith
RICHARD K. GRIFFITH
Attorney for Defendants

RICHARD K. GRIFFITH
ATTORNEY–AT–LAW

(808) 548-2774
1100 WARD AVENUE
HONOLULU, HAWAII 96814

October 3, 1977

Mr. Alfred Y. K. Au
947–B Koko Head Avenue
Honolulu, Hawaii 96815

Re: Au v. Kelly, et al.
Civil No. 47984

Dear Mr. Au:

Enclosed please find an Order Granting Defendants' Motion for New Trial. If the order meets your approval, kindly sign same and return it to the undersigned for submission to the Court. A file-marked copy will be forwarded to you upon its availability.

Very truly yours,
/s/ R. K. Griffith
R. K. Griffith

syc
Enclosure
cc: Honorable John C. Lanham

R–35

947–B KOKO HEAD AVE.
Honolulu, HI 96816
October 7, 1977

Richard K. Griffith
1100 Ward Avenue
Honolulu, Hawaii 96814

Re: Au v. Kelly, et al, Civil No 47984

Dear Mr. Griffith:

I am returning the instrument which you have prepared for my approval unsigned for the following reasons:

I. The judgment of the Court on the motion heard on Aug. 26, 1977 has not been returned. I had expected a written decision.

2. Particularly if it is adverse, I would like to have the legal cause or basis for vacating the jury's verdict clearly delineated in order to enable me to perfect my appeal to the Supreme Court.

3. If your submission of the instrument in question for my approval is with the prior knowledge, approval or consent of the Judge, I would like to lodge my most vehement protest of such unilateral action without my knowledge and participation, intended to prejdice my cause.

4. I would like to register a complaint to your post-trial deposition of October 5, 1977. I have not seen an order of the Court permitting it.

5. Your motion for the setting of a new trial is most premature and presumptuous at this point in time.

Respectfully yours,
/s/Alfred Y. K. Au
Alfred Y. K. Au

Enclosure
cc: Honorable John C. Lanham

R–36

RICHARD K. GRIFFITH
ATTORNEY–AT–LAW

(808) 548-2774
1100 WARD AVENUE
HONOLULU, HAWAII 96814

October 13, 1977

Honorable John C. Lanham
2nd Floor, 426 Queen Street
Honolulu, Hawaii 96813

Re: Au vs. Kelly, et al.
Civil No. 47984

Dear Judge Lanham:

I prepared the attached Order per instructions from your law clerk and it was submitted to plaintiff for his approval as to form. Plaintiff refuses to approve the form of the Order and his explanation is attached.

Since the plaintiff is adamant in his refusal to approve the form, I am hereby submitting the Order for your signature and entry according to the decision on the Motion for New Trial rendered August 26, 1977.

Respectfully yours,

R. K. Griffith

RKG/syc
Attachments
cc: Alfred Y. K. Au

R–37

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774
Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	CIVIL NO. 47984 ORDER GRANTING DEFENDANTS' MOTION FOR NEW TRIAL

ORDER GRANTING DEFENDANTS' MOTION FOR NEW TRIAL

The above-entitled Motion having come on for hearing before the Honorable John C. Lanham, Judge of the above-entitled Court, on August 26, 1977, at 8:30 a.m., and counsel and plaintiff, pro se, having been heard and the Court being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion be granted, and that a new trial in the above-entitled case shall be had on all of the issues therein.

DATED: Honolulu, Hawaii, _____

_____
Judge of the above-entitled Court

APPROVED AS TO FORM:

_____
ALFRED Y. K. AU, Pro Se

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774
Attorney for Defendants

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1977 OCT 26 AM 8-14
R. A. Yamada
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	CIVIL NO. 47984 ORDER GRANTING DEFENDANTS' MOTION FOR NEW TRIAL

ORDER GRANTING DEFENDANTS'
MOTION FOR NEW TRIAL

The above-entitled Motion having come on for hearing before the Honorable John C. Lanham, Judge of the above-entitled Court, on August 26, 1977, at 8:30 a.m., and counsel and plaintiff, pro se, having been heard and the Court being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion be granted, and that a new trial in the above-entitled case shall be had only on the issue of damages therein.

DATED: Honolulu, Hawaii, OCT 25, 1977

/s/ John C. Lanham
Judge of the above-entitled Court

R–38

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774
Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	) CIVIL NO. 47984) MOTION TO STRIKE PLAINTIFF'S NOTICE OF APPEAL AND DESIGNATION OF THE RECORD ON APPEAL; MEMORANDUM IN SUPPORT THEREOF; NOTICE OF MOTION

MOTION TO STRIKE PLAINTIFF'S NOTICE OF APPEAL AND DESIGNATION OF THE RECORD ON APPEAL

Come now Defendants and pursuant to Rule 73(a), Hawaii Rules of Civil Procedure, and Section 641–1, Hawaii Revised Statutes, hereby move this Court to strike Plaintiff's notice of appeal and designation of the record on appeal filed November 23, 1977 on the following grounds:

1. That the order of this Court granting Defendants' motion for new trial entered October 25, 1977 is an interlocutory order and not a final judgment or order from which an appeal may be taken as a matter of right.

2. That no application has been made to this Court for an interlocutory appeal as required by Section 641–1(b), Hawaii Revised Statutes.

This motion is based upon the records in this action and the attached memorandum.

DATED: Honolulu, Hawaii, December 14, 1977.

/s/ Richard K. Griffith
RICHARD K. GRIFFITH
Attorney for Defendants

I hereby certify that a copy of the within was duly mailed on DEC 15 1977 to Alfred Y. K. Au, Pro Se, at his last known address.
/s/ R. K. Griffith
Attorney for Defendants

R–45

CIV 47984—ALFRED AU v HOYT F KELLY, et al
DATE: FRIDAY, AUGUST 26, 1977—8:30 a.m./9:20 a.m.
PRESENT: HON. JOHN C. LANHAM, SIXTH JUDGE, PRESIDING

M. Dowson, clerk
C. Takaki, reporter
RICHARD K. GRIFFITH for defendants, movant
Alfred Au, plaintiff, pro se

MOTION FOR NEW TRIAL, OR, IN THE ALTERNATIVE, MOTION FOR REMITTITUR:

Court heard argument from Messrs. Griffith and Au, during which time the court commented he felt there was ample evidence of negligence, after which he gave his decision, explaining that when he heard the amount of the verdict he was shocked; that he didn't see how the jury reached the amount on so little medical evidence presented, and that he believed the jury was influenced by Mr. Au's testimony about his having trouble finding the owner of the building.

Citing the law which gives the court the duty to set aside a verdict when it appears to be manifestly against the weight of the evidence, the court granted the motion for new trial, feeling this verdict is way in excess of that which is justified in this case.

The court explained to Mr. Au he has a choice of either having a new trial or accepting a net verdict of $14,000; explained further that he can appeal at this point under Rule 73, HRCP.

Mr. Griffith raised the question of whether the new trial would be on the issue of damages alone, which matter was taken under advisement awaiting authorities within ten days.

BY ORDER OF THE COURT: /s/ M. Dowson CLERK

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1979 JUL 27 PM 2:31
H. SETO
CLERK

ALFRED Y K AU, Pro se
9478 Koko Head Avenue
Honolulu, Hawaii 96816
Telephone: 734-7235

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff,	CIVIL NO. 47984
vs.	PLAINTIFF'S OPENING
HOYT F. KELLY, et al., Defendants.	STATEMENT

PLAINTIFF'S OPENING STATEMENT

Plaintiff ALFRED Y. K. AU, having been unsuccessful in setting aside the Order of October 25, 1977, granting Defendants a new trial on the issue of damages only (Civil No. 47984, Supereme Court, State of Hawaii, and No. 78–1031, Supreme Court of the United States) respectfully submits the following categorical statement for the Court's consideration.

1. The Current re-trial of the issue of damages should proceed without any undue delay because the "interlocutory" status of the case has been established by the Supreme Court of the State of Hawaii and reaffirmed by the Supreme Court of the United States. Therefore the consideration of any alleged procedural improprieties or illegalities must be deferred to the conclusion of this trial when final judgment is indisputably established.
2. Accordingly, proceeding on the issue of damages, Plaintiff respectfully submits that if the jury had erred at all, it had erred against Plaintiff in awarding him "0" for Special Damages when the admitted evidence in the record clearly and explicitly reflected the economic impact of the injury to Plaintiff's right wrist, as resulting in a marked decline in Plaintiff's income. (See Plaintiff's exhibits 2A, 2B, and 2C, Record on Appeal)
3. The theory of the case, of proving damages by assessing the economic impact as reflected on the income tax returns,

was advanced and instituted by Defendants when they deposed Plaintiff's income tax returns.

At the trial however, counsel for Defendants had vigorously opposed the admission of the tax returns into evidence. The admission or non-admission of the tax returns hung in a balance at one point. This may have caused the jury to return "0" for Special Damages.

4. In Vasconcellos v. Juarez, 37 Haw 364, 365-66, it was determined that an "Appellant who acquiesced and participate in the theory of trial on issue od damages will not be heard on appeal to complain for the first time." As stated above, Defendants were the originator of the theory of using net income returns in assessing the economic impact or damages resulting from the injury. Accordingly based on the tax returns in evidence, and those subsequently deposed, the Special Damages to Plaintiff is determined to be $46,140.82. The details are as follows:

Year	Annual Income	Base Year 1974	Difference (Loss)
1974	$34,281.16	$34,281.16	–0–
1975	28,356.10	34,281.16	– 5,295.06
1976	23,647,89	34,281.16	– 10, 633.27
1977	21,366.94	34,281.16	– 12,914.22
1978	17,612.89	34,281.16	– 16,668.27
Total			$– 46,140.82

5. In the light of the Special Damages being established at $46,140.82, the General Damages as determined by the jury, of $45,000.00 appears just and reasonable.

5. WHEREAS, the total mount of damages which should be awarded Plaintiff, together with interest at 8-1/2% and costs is determined as follows:

Special Damages		$46,140.82
General Damages	$45,000.00	
Less: 30% Contributory negligence	–13,500.00	
Net Amount		31,500.00
Total Damages Due Plaintiff		$77,640.82

The above concludes the statement.

DATED: Honolulu, Hawaii, July 27, 1979.

/s/ Alfred Y. K. Au
ALFRED Y. K. AU, Pro se
for Plaintiff.

Of Counsel:
DAVIS, PLAYDON & GERSON
WALTER DAVIS 1236–o
1333 Pacific Trade Center
Honolulu, Hawaii 96813
Telephone: 524-2466
Attorney for Defendants

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1979 AUG - 9 PM 2:22
R. A. Yamada
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	) Civ. No. 47984) MOTION IN LIMINE; NOTICE OF MOTION) Trial: Monday, August 13, 1979) 9:00 a.m.) Judge Fukushima

MOTION IN LIMINE

Come now the above named defendants, by and through their counsel, Davis, Playdon & Gerson, and move this Court for an order in limine prohibiting the plaintiff from making any reference to, questioning any witnesses concerning, or presenting any evidence or argument upon the following:

(1) Insurance, including but not limited to, insurance companies, policies of insurance, and limits of liability of insurance policies;

(2) Any settlement offers or demands heretofore made by either plaintiff or defendant in this matter;

(3) Any reference whatsoever to the previous trial herein, including, but not limited to, the jury award and the apportionment of liability by the previous jury;

(4) Any reference whatsoever to First Insurance Company, any of its representatives, officers, or former attorneys;

(5) Any writings or documentation prepared by plaintiff purportedly evidencing loss of earnings or other special damages.

This motion is made upon the grounds that all of the above items of evidence are inadmissible at the trial herein and any testimony concerning such matters could very well lead to a

mistrial herein, and is based upon all of the records, files and proceedings herein.

Dated: Honolulu, Hawaii, August 9, 1979.

DAVIS, PLAYDON & GERSON
By /s/ Walter Davis
WALTER DAVIS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU, Plaintiff, vs. HOYT F. KELLY, et al., Defendants.	Civ No. 47984 NOTICE OF MOTION

NOTICE OF MOTION

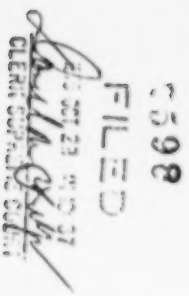
TO: ALFRED Y. K. AU, ESQUIRE
947B Koko Head Avenue
Honolulu, Hawaii 96816
Pro Se

PLEASE TAKE NOTICE that the foregoing motion will come on regularly for hearing before the Honorable Yasutaka Fukushima in his courtroom in the Judiciary Building, Honolulu, Hawaii, on Monday, August 13, 1979 at 9:00 o'clock a.m., or as soon thereafter as counsel can be heard.

Dated: Honolulu, Hawaii, August 9, 1979.

DAVIS, PLAYDON & GERSON

By /s/ Walter Davis
WALTER DAVIS

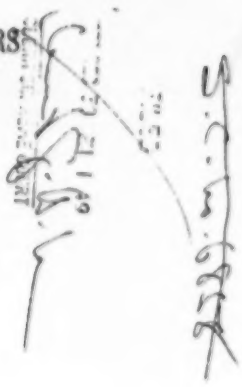


Financial Plaza of the Pacific

DECLARATION OF HORIZONTAL PROPERTY REGIME

AND

BY LAWS OF ASSOCIATION OF OWNERS



Dated December 10, 1968

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED FOR RECORD
DECEMBER 10, 1968
LIBER 6325 PAGE 298

DECLARATION OF HORIZONTAL PROPERTY REGIME UNDER CHAPTER 170A, REVISED LAWS OF HAWAII 1955, AS AMENDED

FINANCIAL PLAZA OF THE PACIFIC

The undersigned, J. Floyd Scott, R. M. Cooke, Henry B. Clark, Jr., Ben H. Bond, Jr. and L. A. Wills, Trustees under the Agreement and Declaration of Trust dated January 20, 1966, as amended by Agreement dated September 20, 1967, and as further amended by Agreement dated November 13, 1968, between the undersigned and AMERICAN SAVINGS AND LOAN ASSOCIATION, a Utah corporation, BANKOH CORPORATION, a Hawaii corporation, CASTLE & COOKE, INC., a Hawaii corporation, TERRITORIAL SAVINGS AND LOAN ASSOCIATION, a Hawaii corporation, and WILCOX DEVELOPMENT CORPORATION, a Hawaii corporation, do hereby declare:

1. Submission of Property. The undersigned hereby submit the land hereinafter described, owned by the undersigned in fee simple absolute, together with the buildings and improvements thereon and all articles of personal property intended for use in connection therewith (hereinafter called the "Property") to the Horizontal Property Regime established by Chapter 170A, Revised Laws of Hawaii 1955, as amended, and do hereby establish a Horizontal Property Regime with respect to the Property:

All that certain piece or parcel of land being portions of:

Royal Patent 45, Land Commission Award 8-B to Boasa Mahune;
Royal Patent 4391½, Land Commission Award 33 to Thomas Cummins;
Royal Patent 5630, Land Commission Award 191, Apana 4 to M. Kekauonohi;
Royal Patent 44, Land Commission Award 226 to Keauiaole;
Royal Patent 1769, Land Commission Award 624 to Stephen Reynolds;
Royal Patent 1769, Land Commission Award 628 to Stephen Reynolds;
Royal Patent 38, Land Commission Award 721 to Mahuka and Kaai; and
Grant 1285 to H. S. Swinton

and thus bounded and described:

Beginning at the west corner of this piece of land, on the easterly side of Fort and Merchant Streets, the true azimuth and distance from a copper pin set in concrete sidewalk on an offset of five (5.00) feet from the southwesterly side of Merchant Street at the angle in Merchant Street between Fort and Bishop Streets being 158° 55' 40" 153.77 feet, the coordinates of said copper pin referred to Government Survey Triangulation Station "Punchbowl" being 1,409.88 feet south and

STATE OF HAWAII

DEPARTMENT OF REGULATORY AGENCIES

Honolulu

I, WAYNE MINAMI, Director of Regulatory Agencies of the State of Hawaii, do hereby certify that FINANCIAL PLAZA OF THE PACIFIC is not registered in this Department either as a corporation, partnership, or trade name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Regulatory Agencies at Honolulu, this 21st day of July, 1977.

Wayne Minami

Director of Regulatory Agencies

By _____
Corporation and Securities Administrator

FILED

FILED

Civil No. 4795

PLAINTIFF'S EXHIBIT

1977

1977

Clerk

In Evidence

No. 7598

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM, 1979

ALFRED Y. K. AU,

Petitioner-Appellant,

vs.

HOYT F. KELLY, R.M. COOKE, HENRY B. CLARK, JR., JAMES T. KAWAMURA, and L. A. Wills, Trustees

d b a

FINANCIAL PLAZA OF THE PACIFIC.

Respondents-Appellees.

CIVIL NO. 47984

APPEAL FROM THE JUDGMENT FILED SEPT. 4, 1979

FIRST CIRCUIT COURT

HONORABLE YASUTAKA FUKUSHIMA, Judge

1981 DEC -1 FILED
CLERK, SUPREME COURT

NOTICE OF APPEAL

Pursuant to Rule 13.3 of the Rules of the Supreme Court of the United States, Notice of Appeal is hereby given, in accordance with 28 U. S. C. § 2101(c).

Dated: Honolulu, Hawaii, December 1, 1981.

ALFRED Y. K. AU, pro se
947B Koko Head Avenue
Honolulu, Hawaii 96816

Phone: 7347235

RECEIVED
DEC - 1 1981
DAVIS & PLAYDON 12:58

AFFIDAVIT OF SERVICE

Affidavit of Service is hereby given, attesting to the fact that three (3) copies of the foregoing Jurisdictional Statement have been hand delivered to:

DAVIS & PLAYTON
1333 Pacific Trade Center
190 S. King St.
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, February 1, 1982

/s/ Alfred Y. K. Au
ALFRED Y. K. AU, pro se